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No. 03-121

Supreme Court, U.S.
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In The

Supreme Court of the United States

CM TAX EQUALIZATION FOUNDATION, INC., *et al.*,

Petitioners,

v.

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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BRIEF IN OPPOSITION

This Brief in Opposition is filed on behalf of Respondents Columbus-Muscogee County Consolidated Government (the "Consolidated Government"), Muscogee County Board of Tax Assessors, Lula Lunsford Huff in her official capacity as Tax Commissioner of Muscogee County, and the Muscogee County Board of Equalization ("Respondents") in response to the Petition for a Writ of Certiorari filed by CM Tax Equalization Foundation, *et al.* (the "Petition").

I. STATEMENT OF THE CASE

The Petition raises legal issues that are virtually identical to those that this Court decided in *Nordlinger v. Hahn*, 505 U.S. 1, 112 S. Ct. 2326 (1992). Because the Supreme Court of Georgia's decision below does not conflict with this Court's analysis of the acquisition-value based property tax system set forth in *Nordlinger*, Respondents strongly contend that this case does not merit review.[1]

A. Background

Petitioners ask this Court to strike down a local amendment to the Georgia Constitution that the voters of Columbus-Muscogee County approved in 1982 by an

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[1] Petitioners relegate their discussion of *Nordlinger* to the last section of their brief. (*See* Petition at 26.) Because *Nordlinger* should control any analysis in this case Respondents will deviate from the structure of Petitioners' brief and address it first.

almost three-to-one margin (the "Amendment"). The Amendment promulgated an acquisition-value based property tax system that was designed to protect Columbus-Muscogee homeowners from inflation (the "Homestead Freeze"). The Amendment provides in relevant part:

> Homestead property in Muscogee County shall be valued for purposes of ad valorem taxation for school and city-county consolidated government purposes based upon the fair market value of the property as of January 2, 1983; or as of January 1 of the first year when homestead exemption is allowed and claimed after January 1, 1983; or as of January 1 of the year following the last change of ownership after January 1, 1983, whichever is later.

1981 Ga. Laws 1926 (Respondents' app. at 5a).[2]

Elected council members, commentators, and neighbors publicly and exhaustively debated the Amendment many months before Columbus-Muscogee County residents resoundingly approved the measure in 1982 – and overwhelmingly opposed an attempt to repeal it in 1991.

B. The History of the Homestead Freeze

On December 23, 1980, the Council of Columbus, Georgia ("the Council") unanimously adopted a resolution proposing the Amendment. The Council sought to protect homeowners from "higher property assessments brought about by rampant inflation." (Respondents' app. at 24a.)

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[2] "Respondents' app." refers to the appendices of this Brief in Opposition to Petition For a Writ of Certiorari.

In the three years preceding the 1982 vote on the Homestead Freeze, inflation had soared into double digits. The average change in the Consumer Price Index, the most widely used measure of inflation, for the South Urban region was 11.4% in 1979, 13.1% in 1980, and 10.7% in 1981. (*See* Petition app. at 49a.) Significantly, the Council emphasized that the value of local single family homes was increasing *even more sharply* than general inflation rates. (*See* Respondents' app. at 24a.)

Both chambers of Georgia's General Assembly unanimously approved the proposed Amendment during the 1981 session. *See* 1981 Ga. Laws 1926 (Respondents' app. at 5a). The Amendment enjoyed wide local support, and a substantial majority of Columbus-Muscogee voters approved it in the 1982 general election. The vote in favor of the Homestead Freeze was 19,513 to 7,143, or 73.2% to 26.8%. *See* 1983 Ga. Laws 5210 (Respondents' app. at 11a). The Georgia Constitution of 1983, also approved in the 1982 general election, eliminated the procedure for enacting further local constitutional amendments and provided that from then on, only "amendments of general and uniform applicability throughout the state shall be proposed, passed, or submitted to the people." GA. CONST. art. X, § 1, ¶ 1 (Respondents' app. at 26a). The 1983 Constitution contained a provision preserving then-existing local constitutional amendments until at least July 1, 1987, and afterwards if they were expressly continued. *See* GA. CONST. art. XI, § 1, ¶ 4 (Respondents' app. at 26a). The Homestead Freeze was continued in effect beyond July 1, 1987, by the General Assembly's passage of a local law. *See* GA. CONST. art. XI, § 1, ¶ 4(a) (Respondents' app. at 26a); 1986 Ga. Laws 3800 (Respondents' app. at 12a).

During the 1991 Regular Session of the General Assembly, legislation was passed authorizing a local referendum on whether the Homestead Freeze should be repealed. *See* 1991 Ga. Laws 4255 (Respondents' app. at 15a). In a referendum held November 5, 1991, an overwhelming majority of Columbus-Muscogee residents voted to keep the Homestead Freeze. The vote *against* the proposed repeal was 24,247 to 5,731, or 80.9% to 19.1%. *See* 1992 Ga. Laws CCCLXXXVI (Respondents' app. at 20a). Thus, voters showed even wider support for the Homestead Freeze after they had the opportunity to experience its positive effects.

Having twice failed to defeat the Homestead Freeze at the ballot box, the Petitioners filed this action on August 16, 2000, in an effort to invalidate it judicially. Petitioner CM Tax Equalization Foundation, Inc. ("CM Tax") is a corporation run by a coalition of property developers, and its sole purpose is to finance this litigation. CM Tax's President is John Flournoy, president of Flournoy Development Company, which develops apartments in the Columbus-Muscogee County area. (*See* Petition app. at 40a.) Another officer of CM Tax is an "apartment developer, owner and operator" in Columbus-Muscogee County. (*Id.*)

Relying on *Nordlinger v. Hahn*, 505 U.S. 1, 112 S. Ct. 2326 (1992), the Supreme Court of Georgia held that the Homestead Freeze did not violate the U.S. Constitution. *See Columbus-Muscogee County Consol. Gov't v. CM Tax Equalization Found., Inc.*, 276 Ga. 332, 579 S.E.2d 200 (Ga. 2003). Petitioners now ask this Court to reverse.

II. ARGUMENT

A. Petitioners Have Failed to State Any "Compelling Reasons" for Review.

1. Standard of Review

"A petition for a writ of certiorari will be granted only for compelling reasons." Supreme Court Rule 10. This Court has been reluctant to expend its resources considering cases in which (1) an asserted conflict between decisions is illusory; (2) a federal question is "wanting" or the case could be decided on non-federal grounds; and (3) the questions presented are important "merely to the litigants" and do not "present an issue of immediate public significance." *Rice v. Sioux City Mem. Park Cemetery, Inc.*, 349 U.S. 70, 79, 75 S. Ct. 614, 620 (1955).

2. The Decision Below Does Not Conflict With This Court's Decisions on Acquisition-Value Property Tax Systems.

The holdings of the court below are entirely consistent with the holdings of this Court. This Court has addressed whether acquisition-value based property tax systems violate the Fourteenth Amendment's Equal Protection Clause in two cases, *Nordlinger v. Hahn*, 505 U.S. 1, 112 S. Ct. 2326 (1992), and *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336, 109 S. Ct. 633 (1989). This Court struck down the property tax system at issue in *Allegheny* but three years later upheld the factually distinct system at issue in *Nordlinger*. *Nordlinger* controls here for two reasons: (1) the property tax system in *Nordlinger* is almost identical to the system at issue here; and (2) the Court in

Nordlinger so narrowed the *Allegheny* holding that it does not factually apply in this case.

(a) The Court Below Correctly Applied *Nordlinger*.

The Georgia Supreme Court correctly decided that under *Nordlinger*, the Homestead Freeze did not violate equal protection. In *Nordlinger*, this Court upheld a property tax assessment system almost identical to the one at issue here. The property tax system was authorized by Proposition 13, a referendum that became an amendment to California's constitution after it was approved by a majority of California voters. *See Nordlinger*, 505 U.S. at 3-4, 112 S. Ct. at 2328. Proposition 13 capped or "froze" real property taxes at 1% of a property's "full cash value." It defined the "full cash value" as the assessed valuation as of 1975. *Id.* at 5, 112 S. Ct. at 2329. Valuations were reassessed only when property was sold or new construction occurred on the property. *See id.* The value of property not sold or improved was frozen at 1975 values, except for a nominal 2% adjustment for inflation each year. This system produced "dramatic disparities in the taxes paid by persons owning similar pieces of property." *Id.* at 6, 112 S. Ct. at 2329.

Stephanie Nordlinger purchased her home thirteen years after some of her neighbors. *See id.* at 6-7, 112 S. Ct. at 2330. As a result, her property taxes were about five times higher than those who owned comparable homes

with assessed values "frozen" under Proposition 13.[3] *See id.* at 7, 112 S. Ct. at 2330. She claimed the classification of new owners versus old owners under Proposition 13 violated the Equal Protection Clause of the United States Constitution. *See id.* at 8, 112 S. Ct. at 2330. Her claims were rejected at all levels of the California judicial system, and Nordlinger sought review from this Court. *See id.* at 9, 112 S. Ct. at 2331.

This Court analyzed the Proposition 13 system under the rational basis standard of review, which requires that classifications in laws need only "rationally further[ ] a legitimate state interest." *Id.* at 11, 112 S. Ct. at 2332. The Court noted that "in general, the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification." *Id.*

The assessment system satisfied the rational basis test because it furthered the state's legitimate interest in promoting "neighborhood preservation, continuity, and stability." *Id.* at 12, 112 S. Ct. at 2333. The system discouraged high turnover in neighborhoods and protected lower-income families against being forced out of their communities by "gentrification." *Id.* Furthermore, this Court concluded that new homeowners do not have the same reliance interest in the lower tax values as do long-time owners. *See id.* Even though the Proposition 13 system created "staggering" differences in assessments of comparable property, it did not violate equal protection

[3] This Court noted evidence of other homeowners paying seventeen times more than comparable properties. *See Nordlinger*, 505 U.S. at 7 n.2, 112 S. Ct. at 2330 n.2.

because it was rationally related to these legitimate government interests. *Id.* at 6, 17, 112 S. Ct. at 2329, 2335.

Relying on *Nordlinger*, in *Fitzgerald v. Racing Ass'n of Central Iowa*, 539 U.S. ___, 123 S. Ct. 2156 (2003), this Court very recently stressed that the rational basis standard of review "is especially deferential in the context of classifications made by complex tax laws." *See Fitzgerald*, 539 U.S. at ____, 123 S. Ct. at 2160 ("In the context of an equal protection claim, the burden is imposed on plaintiffs to negative every conceivable basis that might support different treatment."); *see also Nordlinger*, 505 U.S. at 11, 112 S. Ct. at 2332. In *Fitzgerald*, the Court held:

> [T]he Constitution grants legislators, not courts, broad authority (within the bounds of rationality) to decide whom they wish to help with their tax laws and how much help those laws ought to provide. The task of classifying persons for benefits inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and **the fact the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration**.

Fitzgerald, 539 U.S. at ___, 123 S. Ct. at 2160 (emphasis added).

The Court thus upheld a tax law that taxed revenues from slot machines at racetracks at a higher rate than revenues from slot machines on river boats.

The tax system that this Court upheld in *Nordlinger* is almost identical to the Homestead Freeze. Both systems promote neighborhood "preservation, continuity, and

stability" by protecting homeowners from being forced out of neighborhoods by inflationary property tax increases. Georgia's Supreme Court thus correctly held that "the record in this case establishes that the very same policies identified in *Nordlinger* underlie the acquisition-value taxation scheme authorized by the Homestead Freeze." *Columbus-Muscogee County Consol. Gov't,* 276 Ga. at 335, 579 S.E.2d at 203 (Ga. 2003). Because the Homestead Freeze "was enacted precisely to achieve the benefits of an acquisition-value system," the Georgia Supreme Court held that "the Homestead Freeze . . . is not unconstitutional under a rational relationship equal protection analysis. . . . " *Id.* at 336, 579 S.E.2d at 203.

(b) The Court Below Correctly Distinguished Allegheny.

Allegheny is factually distinguishable from both *Nordlinger* and this case. In *Allegheny*, the Webster County, West Virginia, tax assessor unilaterally and without voter mandate fixed annual assessments for property at 50% of the appraised value. *See Allegheny*, 488 U.S. at 338, 109 S. Ct. at 635. The "appraised value" under the system equaled the price for which the property was last sold. Because of increasing land values, property that changed hands typically was assessed at higher rates than property that had not been sold. *See id.* at 338, 109 S. Ct. at 635.

In rejecting this tax system, the Court emphasized the fact that the Webster County Tax Assessor "apparently on her own initiative" created the challenged assessment system in contravention of the West Virginia Constitution and state laws that required property to be taxed uniformly "according to its estimated market value." *Id.* at

345, 109 S. Ct. at 638. In a footnote critical to understanding this Court's analysis, the Court stated that "[w]e *need not and do not* decide today whether the Webster County assessment would stand on a different footing if it were the law of a State . . . instead of the *aberrational enforcement policy* it appears to be." *Id.* at 344 n.4, 109 S. Ct. at 638 n.4 (emphasis added). Thus, this Court has distinguished between two kinds of tax systems: those that are based on the decisions of administrative officials, like the one at issue in *Allegheny*, and those that are based on state law. As an example of a system based on state law, the Court specifically cited California Proposition 13. *See id.* This Court explicitly left open the question whether a state law that froze property values like Proposition 13 – as opposed to an administrative official's decision like the one at issue in *Allegheny* – would violate equal protection. *See id.*

The Court answered the question three years later when it upheld Proposition 13 in *Nordlinger*. According to the Court in *Nordlinger*, *Allegheny* did not control its analysis of Proposition 13 because *Allegheny* presented "the *rare* case where the facts *precluded any plausible inference* that the reason for the unequal assessment practice was to *achieve the benefits of an acquisition-value tax scheme*." *Nordlinger*, 505 U.S. at 16, 112 S. Ct. at 2335 (emphasis added).[4]

Allegheny's limited holding thus offers no support for Petitioners' equal protection claim. As this Court noted in

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[4] In correctly distinguishing *Allegheny*, the Georgia Supreme Court cited this very language. (*See* Petition app. at 7a.)

Nordlinger, the *Allegheny* tax system was adopted unilaterally by a single official, with no evidence that her goal was to give taxpayers the benefits of an acquisition-value based assessment system. Proposition 13 and the Homestead Freeze, on the other hand, involved legislative discretion and were enacted precisely to achieve the benefits of an acquisition-value tax scheme, a rational basis for the policies. *See id.* at 17, 112 S. Ct. at 2335. The court below therefore did not err when it held that *Allegheny* does not control in this case.

(c) Proposition 13 Is Indistinguishable from the Homestead Freeze.

Petitioners go to elaborate lengths to distinguish the Homestead Freeze from Proposition 13 because they know their claims must fail under *Nordlinger*. Petitioners present no convincing argument as to why *Nordlinger* does not control this Court's analysis. Upon careful review, it is apparent that *Nordlinger* rather than *Allegheny* applies.

First, Petitioners suggest that *Nordlinger* is distinguishable from this case because *Nordlinger* involved a statewide constitutional provision, as opposed to a local one.[5] (*See* Petition at 27.) Nowhere in *Nordlinger* does the Court make such a distinction. To contend that *Nordlinger* is limited to cases involving laws of statewide application is to ignore the import of the decision. As the court below

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[5] Petitioners are quick to emphasize that the Homestead Freeze affects only Columbus-Muscogee homeowners; however, precisely because of that limited application, this case does not raise an issue of national importance, and it does not merit certiorari. *See* Section II.A.4, *supra*.

correctly held, Proposition 13's statewide effect is not critical to applying *Nordlinger* in this case. (*See* Petition app. at 7a-8a.) In *Nordlinger*, this Court focused not on Proposition 13's statewide effect but on whether the "legislature" or "governing decision maker" had a rational basis for Proposition 13's tax classifications and whether those classifications furthered the government's goal. *Nordlinger*, 505 U.S. at 15, 112 S. Ct. at 2334. Furthermore, because the Amendment was approved by a two-thirds majority of both chambers of Georgia's General Assembly, as was required of all constitutional amendments, and voted on by the affected citizens, it is more akin to Proposition 13 than to the decision of the rogue administrative official in *Allegheny*.

Second, Petitioners suggest that Proposition 13 survived in *Nordlinger* because it served the state's interest in controlling inflation and providing predictability in the amount of taxation by providing for a 1% cap on the tax rate. (*See* Petition at 27-28.) This is, of course, exactly the purpose and end result of the Homestead Freeze. Petitioners incorrectly suggest that Respondents have the unfettered ability to raise taxes by increasing the millage rate. (*See id.* at 28.) Tax numbers do not support this argument. The millage rate in Columbus has increased only five mills over twenty years, which indicates (1) that Columbus has taken an extremely conservative approach to millage rate increases and (2) that Columbus has been able to manage its government without the need for

significant increases.[6] (*See* Petition app. at 53a-55a.) Columbus-Muscogee County residents have enjoyed remarkable stability, which allows homeowners to estimate their future tax burdens with confidence. The Homestead Freeze achieves the same stability that Proposition 13 affords California taxpayers.

Third, Petitioners incorrectly argue that "the Supreme Court's approval in *Nordlinger* of a taxation system that actually furthered the state's interest in protecting against inflation does not justify a scheme that only serves to impose an ever increasing portion of the County's tax burden on newcomers and renters." (Petition at 28.) Although it may be true that "newer" homeowners shoulder more of the tax burden than "older" homeowners initially, Proposition 13 had exactly the same effect. This Court noted that after eleven years under Proposition 13, the 44% of California homeowners who owned their homes at the time Proposition 13 was enacted "shouldered only 25% of the more than $4 billion in residential property taxes paid by homeowners statewide." *Nordlinger*, 505 U.S. at 6, 112 S. Ct. at 2329. This Court further noted that this burden on newcomers would continue to grow if property values continued to rise more than the annual 2% inflationary cap. *See id.* This Court nonetheless held these inequities did not violate equal protection because

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[6] The power to increase the millage rate is limited by law and the political system. Georgia's Taxpayer Bill of Rights specifically provides the mechanism for homeowners to receive notice of possible changes in the millage rate. *See* 1999 Ga. Laws 1043 (Respondents' app. at 21a-23a.) If the people oppose a change in the millage rate, they can express their opposition in mandatory public hearings and ultimately at the ballot box. This check on the government's power to raise the millage rate further ensures stability.

Proposition 13 served the state's interest in protecting homeowners from inflation. *Nordlinger*, 505 U.S. at 16-17, 112 S. Ct. at 2335, 2336. The Homestead Freeze serves the same purpose, and it was enacted for this very reason, to protect against "rampant inflation." (*See* Respondents' app. at 24a.) If Proposition 13 does not violate equal protection, neither does the Homestead Freeze.

Finally, Petitioners suggest that *Nordlinger* does not control because Proposition 13 did not provide for an "inflation adjustment" like the one Petitioners claim is provided by the 1980 Homestead Exemption. (*See* Petition at 28.) Petitioners' argument is a red herring; the 1980 Homestead Exemption upon which they rely has not existed in Columbus-Muscogee County since 1992, when it was replaced by a standard $13,500 exemption.

Laws like the Homestead Freeze do not violate equal protection "so long as there is a plausible policy reason for their classification." *Nordlinger*, 505 U.S. at 11, 112 S. Ct. at 2332. The Consolidated Government had a legitimate interest in ensuring stability and easing the inflationary burden on its taxpayers, particularly low-income taxpayers and the elderly on fixed incomes. Courts have held repeatedly that the protection of elderly and low-income residents is a legitimate government goal. *See, e.g., Kraebel v. New York City Dep't of Hous. Pres. and Dev.*, 959 F.2d 395, 401-02 (2d Cir. 1992); *Silberman v. Biderman*, 735 F. Supp. 1138, 1147-48 (E.D.N.Y. 1990); *Metrolina Family Practice Group v. Sullivan*, 767 F. Supp. 1314, 1321-22 (W.D.N.C. 1989). The Homestead Freeze is rationally related to this goal because it gives the most vulnerable Columbus-Muscogee taxpayers the certainty they need to plan their economic future by knowing what their property tax liability will be from year to year. Significantly, Petitioners nowhere suggest that this is not a legitimate purpose for legislation.

This Court has concluded that "[w]e need not cast about for reasons for the legislative judgment. We are not required to be sure of the precise reasons for its exercise or be convinced of the wisdom of its exercise." *Bunting v. Oregon*, 243 U.S. 426, 438, 37 S. Ct. 435, 437 (1917). As the Court noted in *Nordlinger*:

> California's grand experiment appears to vest benefits in a broad, powerful, and entrenched segment of society, and . . . ordinary democratic processes may be unlikely to prompt its reconsideration or repeal. **Yet many wise and well-intentioned laws suffer from the same malady.** [Proposition 13] is not palpably arbitrary, and we must decline petitioner's request to upset the will of the people of California.

Nordlinger, 505 U.S. at 18, 112 S. Ct. at 2336 (emphasis added).

The Homestead Freeze need not be perfect. It must only be rational. Under *Nordlinger*, the Homestead Freeze clearly survives this rational basis test.

3. The Decision of the Court Below Does Not Conflict with Other State Court Decisions.

Having failed to show that the decision below conflicts with the decisions of this Court, Petitioners next contend that this case merits review because of "a split in state court decisions following *Nordlinger*." (Petition at 29.) Petitioners argue that the decision below conflicts with *Roosevelt v. Montana Department of Revenue,* 293 Mont. 240, 975 P.2d 295 (Mont. 1999). (*See id).* Any appearance of conflict between these two cases is illusory.

In *Roosevelt*, the Supreme Court of Montana held that Montana's state property tax valuation system violated equal protection. *See Roosevelt*, 293 Mont. at 252, 975 P.2d at 303. Under Montana's statutory scheme, all real property was re-valued as of December 31, 1996. *See id.* at 245, 975 P.2d at 299. However, to avoid imposing hardship on property owners whose property had appreciated since it was last appraised, the legislature adopted a "phase-in provision" that allowed any change in value to be "phased in each year at the rate of 2% of the total change in valuation." *See id.* at 246, 975 P.2d at 299. The system, however, ultimately created increases in property taxes for those whose property declined in value. For example, the *Roosevelt* plaintiff's property value declined from $890,850 in 1996 to $701,890 in 1997. *See id.* at 243, 975 P.2d at 298. Yet, he received a credit of only two percent of the change in value and thus paid taxes based on 124% of the property's 1997 fair market value. *See id.* at 244, 975 P.2d at 298.

Accordingly, Montana's property tax scheme is wholly distinguishable from both Proposition 13 and the Homestead Freeze, and *Roosevelt* does not conflict with either the decision below or *Nordlinger*. As the court in *Roosevelt* clearly explained, unlike California or Columbus-Muscogee, "Montana does not have an 'acquisition value' system of taxation." *See id.* at 251, 975 P.2d at 302. Even the Montana court found that "acquisition value" systems like Proposition 13 (and hence the Homestead Freeze) are distinguishable. *See id. Roosevelt* therefore does not conflict with the decision below, and it does not alter the analysis in this case.

4. This Case Does Not Present an Issue of National Importance.

Petitioners significantly overstate the impact of the decision below. It will not, as they claim, "wreak havoc with tax and other legal regimes throughout the nation." (Petition at 8.) This case involves a local amendment to Georgia's constitution that affects only one of the state's 159 counties. Moreover, the issue is not likely to recur even in Georgia because the local constitutional amendment process under which it was promulgated is now defunct. Other Georgia counties cannot promulgate new local amendments to Georgia's constitution to create similar property-tax systems.

In addition, the decision below is unlikely to affect challenges to acquisition-based property tax systems in other states. While other states have implemented acquisition-value based property tax systems, any future equal protection challenges to those systems will be governed by this Court's seasoned analysis in *Nordlinger*. In short, this case's effects are not nearly as far-reaching as Petitioners contend.

B. The Process for Repealing a Local Amendment to Georgia's Constitution Does Not Violate Equal Protection.

Petitioners contend that by imposing more stringent standards for repealing a local amendment to the Georgia Constitution ("LCA") than were required for continuing it, the Georgia Constitution violates the Equal Protection Clause. This issue, however, was never raised below, misapplies the relevant Georgia constitutional provisions,

lacks legal merit, and uniquely applies to Columbus-Muscogee County. Further, as noted above, the issue is unlikely to recur, and there is no precedential value in deciding it.

Petitioners did not raise this issue below; they raise it for the first time before this Court. Before both the Supreme Court of Georgia and the trial court, Petitioners argued only that the Amendment is not of "equal dignity" with other provisions of the Georgia Constitution. Consequently, they argued, the Amendment cannot survive in the face of other Georgia Constitution provisions with which it allegedly conflicts. This argument is founded upon *state* constitutional law. Petitioners never raised any disparities in the process for enacting, continuing, and repealing LCAs, and they certainly did not allege a violation of the U.S. Constitution that would necessitate heightened scrutiny, as they now claim. Because Petitioners raise this issue for the first time before this Court, the Court should decline to consider it. *See, e.g., Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 109, 122 S. Ct. 511, 513-14 (2001) ("In *Adarand I*, we said that application of our strict scrutiny standard 'should be addressed in the first instance by the lower courts.'"); *NCAA v. Smith*, 525 U.S. 459, 470, 119 S. Ct. 924, 938-939 (1999) ("[W]e do not decide in the first instance issues not decided below.").

Petitioners' argument also misapplies the relevant provisions of the Georgia Constitution. Petitioners argue that because repeal of the Amendment requires passage of a local bill by a majority of both chambers of the Georgia General Assembly plus a referendum in which a majority of Columbus-Muscogee County voters must approve repeal, but continuation of the Amendment after 1987 required only passage of a local bill, opponents of the Amendment are disadvantaged politically. Petitioners are

incorrect for several reasons. First, the requirement that LCAs be continued beyond 1987 by affirmative act did not disadvantage Petitioners. It actually provided them and fellow opponents of the Amendment with an *added* opportunity for repeal of the Amendment, one that the Georgia Constitution did not have to provide. In fact, in contrast to the continuation requirement in the 1983 Constitution, both the Georgia Constitutions of 1945 and 1976 (the two state constitutions prior to the current one that became effective in 1983) automatically continued all previously enacted LCAs, without requiring any affirmative act whatsoever to continue them in force. *See* GA. CONST. of 1976, art. XIII, § 1, ¶ 2 (Respondents' app. at 32a); GA. CONST. of 1945, art. VII, § 10, ¶ 1 (Respondents' app. at 29a). Contrary to the impression created by the Petition, the LCA continuation requirement in the 1983 Constitution did not disadvantage opponents of the Amendment. In fact, it provided opponents an additional opportunity to pursue repeal.

Second, the relevant issue is not what was required to continue an LCA as compared with what is required to repeal one. The relevant issue is what was required to pass the Amendment in the first place compared to what it would take to repeal it. Enactment of the Amendment in 1982 required passage of a constitutional amendment by two-thirds of both chambers of the General Assembly plus referendum approval by a majority of the voters of Columbus-Muscogee County. *See* GA. CONST. of 1976, art. XII, § 1, ¶ 1 (Respondents' app. at 30a). Repeal of the Amendment today similarly would require passage of a local bill by a majority of both chambers of the General Assembly plus referendum approval by a majority of the voters of Columbus-Muscogee County. *See* GA. CONST. art.

XI, § 1, ¶ 4(b) (Respondents' app. at 27a). To the extent any slight discrepancy exists between the form of enactment and repeal (two-thirds support in both chambers of the state legislature was required for enactment in 1982, while only majority support in both chambers is required for repeal today), Petitioners illustrate no harm. Indeed, Petitioners benefit because it would be slightly easier for them to obtain repeal than it was for the Amendment's supporters to achieve enactment.

Even if Petitioners' characterizations of the relevant Georgia constitutional provisions were correct, their legal argument nonetheless lacks merit based on this Court's precedent. Petitioners cite a number of voting rights cases involving disenfranchisement, "population variations in electoral districts, [] *Reynolds v. Sims*, 377 U.S. 533 (1964)," "the possibility that ballots might be treated differently during a recount[,] *Bush v. Gore*, 531 U.S. 98 (2000)," and "ballot access" limits on write-in votes and new political parties seeking to offer a candidate. (Petition at 10.) This case, however, involves none of these issues. There are no allegations of electoral malapportionment, difficulties in reviewing ballots, electoral disenfranchisement, or other limits to ballot access. Indeed, two referenda have been held on the Amendment – one in 1982 regarding whether to enact it and the other in 1991 regarding whether to keep it. In both referenda, Petitioners and other opponents were permitted to voice their views on the issue, mobilize support, and ultimately to vote, as the many news articles cited in the Petition's appendix show. (*See* Petition app. at 37a-40a.) Petitioners have suffered no restriction on access to the democratic process. They may be dissatisfied with the outcome of the

democratic process, but they have not been denied participation in it.

Petitioners also cite *Hunter v. Erickson*, 393 U.S. 385, 89 S. Ct. 557 (1969), in stating that identifiable minorities cannot be targeted and intimating that they fall within this category. If Petitioners were targeted based on a suspect classification, able counsel would have raised the issue long before this Petition in order to trigger a strict scrutiny analysis by the trial court and the Georgia Supreme Court. Their failure to do so should put the merits of any such argument to rest.

Finally, as Petitioners themselves emphasize, the Amendment in this case is unique to Columbus-Muscogee County. The Georgia Constitution that was ratified in 1983 and currently is in effect changed Georgia government such that existing LCAs can continue, but new ones cannot be enacted. Consequently, Petitioners ask this Court to overturn a product of an anachronistic procedure of prior Georgia Constitutions, on an issue that applies to only one county and that will not likely recur.

C. The Georgia Constitution Does Not Violate Equal Protection by Denying Columbus-Muscogee County Residents Rights Provided to Other Georgia Citizens.

Petitioners contend that the Amendment denies Columbus-Muscogee County residents and other Georgia residents similar tax treatment and therefore violates equal protection. As support, Petitioners cite only *Bush v. Gore*, 531 U.S. 98, 121 S. Ct. 525 (2000), in which this Court held that, in the context of recounting voting ballots, "[w]hen a court orders a statewide remedy, there must be

at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied." *Bush*, 531 U.S. at 109, 121 S. Ct. at 532. The facts in *Bush* are not analogous to this case. Unlike the ballot recount at issue in *Bush*, the Columbus-Muscogee County Homestead Freeze referenda do not have statewide ramifications. They did not affect the one-quarter mill that must be provided to the State of Georgia each year for state operations, which is collected based on fair market value instead of the acquisition-value. *See* GA. CONST. art. VII, § 1, ¶ 2(a) (Respondents' app. at 26a); O.C.G.A. § 48-5-8. The Homestead Freeze affects only Columbus-Muscogee County's local government operations; it has no impact whatsoever on the State of Georgia or on other cities or counties. More importantly, Petitioners ignore longstanding precedent of this Court that tax classifications are analyzed on whether a rational relationship to a legitimate end of government exists and are entitled to great deference. *See Fitzgerald*, 539 U.S. at ____, 123 S. Ct. at 2160.

Petitioners also ignore that numerous other LCAs have been continued since the 1983 Georgia Constitution was ratified, some related to taxation (e.g., homestead exemptions, exemptions for capital improvements, and creation of enterprise zones) and some related to other vital local government services. *See* 1983 Ga. Laws 5191 (Respondents' app. at 8a) (establishing county homestead exemptions); 1983 Ga. Laws 5201 (Respondents' app. at 9a) (exempting from county taxation increases in residential or commercial property values resulting from capital improvements); 1983 Ga. Laws 5203 (Respondents' app. at 10a) (establishing enterprise zones in DeKalb and Fulton counties). These LCAs have reflected a desire of the State

of Georgia to allow its local governments to serve as their own "laboratories of democracy" and develop solutions to what they perceive as their own local problems. Moreover, without the continuation of LCAs, the Georgia Constitution ratified in 1983 may have been altogether different or possibly may not even have been adopted. Petitioners nevertheless ask this Court to intrude into this state realm and scrutinize both an amendment process that existed in Georgia for 105 years and the political compromise that resulted in passage of the Georgia Constitution of 1983, now in effect for twenty years.

D. Petitioners' Privileges And Immunities Clause Argument Must Be Disregarded Because It Was Not Raised Below.

For the first time since this case was filed on August 16, 2000, Petitioners advance a Privileges and Immunities Clause claim, distinct from their right to travel claim. Petitioners claim that the Homestead Freeze burdens "several rights protected by the Privileges and Immunities Clause, including the right to equal treatment in the imposition of taxes . . . the right of outsiders to establish residency in Muscogee County . . . and the right of outsiders to purchase a home in Muscogee County." (Petition at 19 (citations omitted).) These arguments do not appear in any of Petitioners' pleadings or briefs below. It is well-settled that because these arguments were not raised in either the trial court or the Supreme Court of Georgia, they cannot be considered properly now. *See NCAA v. Smith*, 525 U.S. 459, 470, 119 S. Ct. 924, 938-939 (1999) (citing *Roberts v. Galen of Virginia*, 525 U.S. 249, 119

S. Ct. 685 (1999); *United States v. Bestfoods*, 524 U.S. 51, 118 S. Ct. 1876 (1998)).

E. The Homestead Freeze Does Not Violate the Right to Travel.

1. Petitioners' Claim is Not Justiciable.

Petitioners claim that the Homestead Freeze violates the right to travel by allegedly classifying residents differently based on when they moved into the County. Yet, Petitioners who did not move into Columbus-Muscogee from out-of-state do not have standing to bring this claim. *See Nordlinger*, 505 U.S. at 10-11, 112 S. Ct. at 2332 (holding that Stephanie Nordlinger had no standing to bring right to travel claim because she lived in California prior to buying her home and could not show that Proposition 13 had kept her from traveling or settling there). Only two of the Petitioners, Ron and Faye Sherrill, moved from out-of-state and purchased a home in Columbus-Muscogee. (*See* Petition at 25.) Even if the Sherrills have standing, however, their right to travel claim is not ripe because they did not exhaust their administrative remedies before filing this suit, as Georgia law requires. *See North Fulton Comm. Hosp. v. State Health Planning & Dev. Agency*, 168 Ga. App. 801, 805, 310 S.E.2d 764, 767 (1983) (refusing to consider constitutional challenge of administrative decision because plaintiff first raised constitutional arguments before trial court rather than the administrative agency); *Sparks v. Caldwell*, 244 Ga. 530, 261 S.E.2d 590 (1979) (refusing to consider constitutional attack on state law because plaintiff had failed to exhaust his administrative remedies); (Petition app. at 69a (noting that only Petitioner Kenneth Henson, Jr. filed an administrative appeal

with the Board of Tax Assessors).) Thus, Petitioners' right to travel claim is not justiciable.

2. The Homestead Freeze Does Not Violate the Right to Travel.

Even if this Court finds that Petitioners have standing to bring a right to travel claim and that any such claim is ripe for adjudication, Petitioners have conceded that no case directly supports their position that an acquisition-value assessment system infringes Petitioners' right to travel. (*See* Respondents' app. at 3a.) In their brief before the trial court, Petitioners also conceded that their right to travel claim was not sufficient to invalidate the Homestead Freeze. (*See* Respondents' app. at 37a n.1.)

The right to travel is not mentioned in the text of the Constitution of the United States. Nevertheless, the right to move freely *from state to state* is "firmly embedded in our jurisprudence." *Saenz v. Roe*, 526 U.S. 489, 498, 119 S. Ct. 1518, 1524 (1999). The Constitution gives U.S. citizens the right to travel *among* the states, not *within* a state. In short, it protects *interstate* travel, not *intrastate* travel. In one case cited by the Petitioners, *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S. Ct. 1076 (1974), this Court held that "[t]he right of *interstate* travel has repeatedly been recognized as a basic constitutional freedom." *Id.* at 254, 94 S. Ct. at 1080 (emphasis added). This interstate travel limitation was adhered to again in *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 106 S. Ct. 2317 (1986). Those who seek to become permanent residents of a state have the right only to be treated

like the state's other citizens. *See Saenz*, 526 U.S. at 500, 119 S. Ct. at 1525.

Lacking precedent, Petitioners rely heavily on *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309 (1982), to support their right to travel argument. *Zobel*, however, is distinguishable and does not control this case. In *Zobel*, this Court struck down an Alaska law that distributed to adult citizens dividends from a public fund of state oil revenues. *Zobel*, 457 U.S. at 56, 102 S. Ct. at 2310. The amount that each adult received from the fund was based exclusively on the length of each citizen's residence. *See id.* The Court struck down the statute after finding that "the State's interest [was] not in any way served by granting greater dividends to persons for their residency. . . ." *Id.* at 62, 102 S. Ct. at 2313.

Zobel is distinguishable because the Homestead Freeze does not impose a durational residency requirement. It applies immediately. *Zobel* also is distinguishable from this case because Columbus-Muscogee County had a legitimate purpose when it enacted the Homestead Freeze: to protect citizens from ever-increasing property taxes. (*See* Respondents' app. at 24a.) The Supreme Court in *Nordlinger* held that this purpose, protecting from inflation those with a reliance interest in the value of their property, is legitimate. *See Nordlinger*, 505 U.S. at 12-13, 112 S. Ct. at 2332, 2333. Further, the Council Resolution in which the Homestead Freeze first was approved states explicitly that it was proposed to protect homeowners from "higher property assessments brought about by rampant inflation." (Respondents' app. at 24a.) The Homestead Freeze was not enacted as a way to allocate public resources among its citizens, as was the situation with the statute in *Zobel*. It was not enacted to reward long-time

Columbus-Muscogee County residents, as the statute in *Zobel* sought to do. The Homestead Freeze is factually different, and its purpose was to protect citizens from inflation. *Zobel* does not control here because the Homestead Freeze's purpose is more sound constitutionally than the purpose of the measure enacted by Alaska's legislature.

Petitioners argue that those who move into Muscogee County from out-of-state must pay higher taxes than do current Muscogee County residents. (*See* Petition at 21.) The Homestead Freeze, however, applies to *all* new homeowners – including those who lived in Columbus-Muscogee County or other parts of Georgia before they purchased their Columbus-Muscogee County homes. Petitioners seek to avoid the conclusion that the Homestead Freeze draws no distinction between "in-county" home buyers, "in-state" home buyers, and "out-of-state" home buyers by citing *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S. Ct. 1076 (1974). That case, however, is inapplicable here because it involves a clear durational residency requirement. In *Maricopa County*, the statute at issue required residents to live in the defendant county for one year before they were eligible to receive indigent hospital care. *See Maricopa County*, 415 U.S. at 252, 94 S. Ct. at 1079.

The Georgia Supreme Court correctly concluded that the Homestead Freeze imposes no such artificial "waiting period." *See Columbus-Muscogee County Consol. Gov't v. CM Tax Equalization Found., Inc.*, 276 Ga. 332, 338, 579 S.E.2d 200, 205 (2003). Unlike the statute at issue in *Maricopa County*, nothing in the Resolution or the Homestead Freeze refers to any time period whatsoever. *Compare Maricopa County,* 415 U.S. at 252, 94 S. Ct. at 1079, *with* 1981 Ga. Laws 1926 (Respondents' app. at 5a).

Moreover, the Homestead Freeze does not prevent a person from out-of-state who moves to Columbus-Muscogee from buying a house for a certain time. A newcomer can buy a house and therefore become a beneficiary of the Homestead Freeze on the very day he or she arrives in Georgia if he or she so chooses. The Homestead Freeze has no durational residency requirement, and *Maricopa County* does not apply.

A Macon, Georgia resident who moves to Columbus and buys a house is unquestionably on equal footing with a new homeowner who moves from Connecticut. Even more compelling, a Columbus-Muscogee resident who moves from one neighborhood in Columbus-Muscogee County to another, or who buys a house for the first time, is in the same position as the new Columbus homeowner who moves from Connecticut. Because the Homestead Freeze does not treat new Columbus-Muscogee residents who move from *out-of-state* differently than those who move from other parts of Georgia – or indeed from within Columbus-Muscogee – it does not violate Petitioners' right to interstate travel. *See Attorney Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 904, 106 S. Ct. 2317 (1986).

III. CONCLUSION

For the foregoing reasons, Respondents ask this Court to deny the Petition for a Writ of Certiorari in this case.

Respectfully submitted,

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APPENDIX A – EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE HON. GEORGE M. PEAGLER, SUPERIOR COURT OF MUSCOGEE COUNTY, MARCH 14, 2001

**IN THE SUPERIOR COURT
OF MUSCOGEE COUNTY
STATE OF GEORGIA**

CM TAX EQUALIZATION FOUNDATION, INC.; HULLETE BOOTH; WILLIAM FEIGHNER; TERRELL GREEN; BETTIE RUTH HAYNES; MOSES HAYNES; KENNETH HENSON, JR.; EARLE F. LASSETER; SALLY BORK LASSETER; LISA D. MCNARRY; FAYE SHERRILL; RON SHERRILL; TED SHORT; PENNY SHORT; CARL J. THOMAS; CONNIE GRAY THOMAS; ERNESTINE WELLS; RICHARD WELLS; WILL WHITE; AMY WHITE; CHRISTOPHER WIGHTMAN; and ASTRID WIGHTMAN; Plaintiffs, V. COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT; MUSCOGEE COUNTY BOARD OF TAX ASSESSORS; LULA LUNSFORD HUFF, in her official capacity as Tax Commissioner, Muscogee County; and MUSCOGEE COUNTY BOARD OF EQUALIZATION; Defendants.	CIVIL ACTION NO.: SU-2000-CV-3256

MARCH 14, 2002
HON. GEORGE M. PEAGLER, JR., PRESIDING
SUMTER COUNTY COURTHOUSE
AMERICUS, GEORGIA

BRENDA C. BROWN, CCR

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[. . .]

[87] MS. ROSEBOROUGH: It doesn't make sense to give rights and benefits to a gentrified class based on their tenure within the county.

Likewise, Your Honor, that is the very thing that the Supreme Court has held violates the right to travel. The giving of benefits to a particular group based on their longevity in the state, likewise their longevity in the county, violates the Due Process Clause and the right to travel.

THE COURT: You agree that this is a case of first impression in Georgia –

MS. ROSEBOROUGH: Yes, sir.

THE COURT: – dealing with this particular issue?

MS. ROSEBOROUGH: Yes, Your Honor. I do.

THE COURT: Okay. Are there any cases from outside of the jurisdiction that seem to give any [88] guidance?

MS. ROSEBOROUGH: Just the Supreme Court cases that talk about the impact of providing a benefit to people based on their tenure in the state. You'd have to analogize for that the case of giving of benefit to people based on their tenure in the county or the tenure of their home ownership in the county, and there really aren't

cases directly on point, but the principle on those cases applies. And when you seek to create a class of people based on the date on which they acquire citizenship, based on the date on which they move to particular state, based on the date they move to a particular county or based on the date they became homeowners –

THE COURT: Do you have a standing issue here inasmuch as none of your Plaintiffs are in the position to be out-of-state residents looking at moving into Muscogee County?

MS. ROSEBOROUGH: No, Your Honor. In *Nordlinger*, the Court found that Ms. Nordlinger didn't have standing to raise the right to travel issue because she had been a resident of the State of California for the entire time, both before and after Proposition 13 was passed.

In our case, our Plaintiff, Faye Sherrill – Ms. Sherrill's in the courtroom – migrated to the State of Georgia from Oklahoma. She was a resident of Oklahoma at [89] the time the freeze was passed and then moved to Muscogee County, so she is a person whose right to travel was burdened by the freeze which she confronted when she made a decision to move into Muscogee County.

THE COURT: Yet she chose to purchase property in Muscogee County, notwithstanding the freeze?

MS. ROSEBOROUGH: Right, but it doesn't matter that she decided to take on the constitutional burden or to live in Muscogee notwithstanding that unconstitutional burden. It only matters that she confronted it for purposes of her having standing to challenge it.

[. . .]

APPENDIX B – RELEVANT STATUTORY PROVISIONS

1981 Ga. Laws 1926

MUSCOGEE COUNTY – VALUATION OF HOMESTEAD PROPERTY

Proposed Amendment to the Constitution

No. 76 (House Resolution No. 271)

A RESOLUTION

Proposing an amendment to the Constitution so as to provide for the valuation of certain homestead property in Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes; to provide for other matters relative to the foregoing; to provide for the submission of this amendment for ratification or rejection; and for other purposes.

BE IT RESOLVED BY THE GENERAL ASSEMBLY OF GEORGIA

Section 1. Article VII, Section I, Paragraph III of the Constitution of the State of Georgia is hereby amended by adding at the end thereof the following paragraph:

"Subject to the conditions and limitations specified by law, homestead property in Muscogee County shall be valued for purposes of ad valorem taxation for school and city-county consolidated government purposes based upon the fair market value of the property as of January 1, 1983; or as of January 1 of the first year when homestead exemption is allowed and claimed after January 1, 1983; or as of January 1 of the year following the last change of ownership after January 1, 1983, whichever is later. The value of any improvements which are made after the base fair market value is established and which require a

building permit to be obtained shall be added to the established base fair market value. The provisions of this paragraph shall apply with respect to valuation of any homestead property only so long as the property is actually occupied by the owner primarily as a homestead and is claimed and qualifies for the homestead exemption allowed under Georgia law. As used in this paragraph, homestead shall have the meaning specified by law for purposes of exemption from taxation, except that the term shall include not more than two acres of land upon which the residence is located or which immediately surrounds the residence. For the purposes of this paragraph, any change of title between spouses shall not be considered a sale, purchase, or change of ownership. The assessed value of such homestead property for the purposes of taxation as specified in this paragraph shall be the value determined pursuant to this paragraph multiplied by the percentage specified by law for assessment of tangible property; provided, however, in case of error, or in case incorrect information is provided, the Board of Tax Assessors may make correction to the January 1, 1983; value; or the value on January 1 of the first year when homestead exemption was allowed and claimed after January 1, 1983; or the value on January 1 of the year following the last change of ownership after January 1, 1983, whichever is later. This paragraph shall not affect state taxation."

Section 2. The above proposed amendment to the Constitution shall be published and submitted as provided in Article XII, Section I, Paragraph I of the Constitution.

The ballot submitting the above proposed amendment shall have written or printed thereon the following:

"[ ] YES
[ ] NO

Shall the Constitution be amended so as to provide for assessment of homestead property in Muscogee County for ad valorem tax purposes based upon the value of the property on January 1, 1983; or as of January 1 of the first year when homestead exemption is allowed and claimed after January 1, 1983; or as of January 1 of the year following the last change of ownership after January 1, 1983, whichever is later?"

All persons desiring to vote in favor of ratifying the proposed amendment shall vote "Yes." All persons desiring to vote against ratifying the proposed amendment shall vote "No."

If such amendment shall be ratified as provided in said Paragraph of the Constitution, it shall become a part of the Constitution of this state.

1983 Ga. Laws 5191

RESULTS OF PROPOSED CONSTITUTIONAL AMENDMENTS

LOCAL CONSTITUTIONAL AMENDMENTS VOTED ON NOVEMBER 2, 1983

AMENDMENT NO. 6

APPLING COUNTY

City of Baxley

Yes 404 No 96

Shall the Constitution be amended so as to authorize a homestead exemption for residents of the City of Baxley in an amount to be fixed by the governing authority of the city at not more than $15,000.00 from all City of Baxley ad valorem taxes?

1983 Ga. Laws 5201

RESULTS OF PROPOSED CONSTITUTIONAL AMENDMENTS

LOCAL CONSTITUTIONAL AMENDMENTS VOTED ON NOVEMBER 2, 1983

DEKALB COUNTY AND FULTON COUNTY

Shall the Constitution be amended so as to exempt the increased value of property resulting from certain capital improvements of the Cabbage town Historic District economic reuse establishment and certain additions thereto from all City of Atlanta and Fulton County ad valorem property taxes, including ad valorem taxes for school purposes, for a period of seven years following their establishment or addition?

City of Atlanta
(DeKalb County)

Yes 1,847 No 1,236

Atlanta School Dist.
(DeKalb County)

Yes 1,847 No 1,236

Fulton County

Yes 40,896 No 39,843

City of Atlanta
(Fulton County)

Yes 25,658 No 20,757

Atlanta School Dist.
(Fulton County)

Yes 26,658 No 20,757

1983 Ga. Laws 5203

RESULTS OF PROPOSED CONSTITUTIONAL AMENDMENTS

LOCAL CONSTITUTIONAL AMENDMENTS VOTED ON NOVEMBER 2, 1983

DEKALB COUNTY AND FULTON COUNTY

Shall the Constitution be amended so as to authorize the General Assembly to provide by local law that exemptions from ad valorem taxation by Fulton County and the City of Atlanta for inventories of certain goods may apply within urban enterprise zones established by the governing body of the City of Atlanta?

City of Atlanta
(DeKalb County)

Yes 1,806 No 1,151

Atlanta School Dist.
(DeKalb County)

Yes 1,806 No 1,151

City of Atlanta
(Fulton County)

Yes 29,199 No 16,576

Atlanta School Dist.
(Fulton County)

Yes 29,199 No 17,576

Fulton County

Yes 46,025 No 34,274

1983 Ga. Laws 5210

RESULTS OF PROPOSED CONSTITUTIONAL AMENDMENTS

LOCAL CONSTITUTIONAL AMENDMENTS VOTED ON NOVEMBER 2, 1983

AMENDMENT NO. 6

MUSCOGEE COUNTY

Shall the Constitution be amended so as to provide for assessment of homestead property in Muscogee County for ad valorem tax purposes based upon the value of the property on January 1, 1983; or as of January 1 of the first year when homestead exemption is allowed and claimed after January 1, 1983; or as of January 1 of the year following the last change of ownership after January 1, 1983, whichever is later?

City of Atlanta
(DeKalb County)

Yes 19,513 No 7,143

(DeKalb County)

Yes 19,513 No 7,143

1986 Ga. Laws 3800

COLUMBUS, GEORGIA AND MUSCOGEE COUNTY VALUATION OF HOMESTEAD PROPERTY; LOCAL CONSTITUTIONAL AMENDMENT CONTINUED.

No. 835 (House Bill No. 527).

AN ACT

To continue in force and effect as a part of the Constitution of the State of Georgia that constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia, providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes; to provide the authority for this Act; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. That constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia, providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes shall not be repealed or deleted on July 1, 1987, as a part of the Constitution of the State of Georgia but is specifically continued in force and effect on and after that date as a part of the Constitution of the State of Georgia.

Section 2. This Act is passed pursuant to Article XI, Section I, Paragraph IV of the Constitution of the State of Georgia which authorizes the continuation of certain amendments to the Constitution.

Section 3. All laws and parts of laws in conflict with this Act are repealed.

NOTICE OF INTENTION TO INTRODUCE LOCAL LEGISLATION

Notice is hereby given that there will be introduced at the regular 1985 session of the General Assembly of Georgia, a Bill to provide for the continuation in force and effect, as part of the Constitution ratified at the General Election in 1982, that constitutional amendment which was proposed by Resolution Act No. 76 (House Resolution No. 271) enacted at the 1981 session of the General Assembly and which was duly ratified at the 1982 general election (Ga. L. 1981, p. 1926) and which relates to the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes.

This the 8 day of January, 1985.

Thomas B. Buck, III
State Representative,
District 95
Pub. Jan. 8, 1985

Georgia, Fulton County.

Personally appeared before me, the undersigned authority, duly authorized to administer oaths, Thomas B. Buck, III, who, on oath, deposes and says that he is Representative from the 95th District, and that the attached

copy of Notice of Intention to Introduce Local Legislation was published in the Columbus Ledger which is the official organ of Muscogee County, on the following date: January 8, 1985.

/s/ Thomas B. Buck, III
State Representative,
District 95

Sworn to and subscribed before me,

this 14th day of January, 1985.

/s/ Cathy Ann Walls
Notary Public, Georgia State at Large.
My Commission Expires Dec. 18, 1988.
(Seal).

Approved March 18, 1986.

1991 Ga. Laws 4255

MUSCOGEE COUNTY - CITY-COUNTY GOVERNMENT AND SCHOOL TAXES; HOMESTEAD VALUATION; LOCAL CONSTITUTIONAL AMENDMENTS REPEALED; REFERENDUM.

No. 167 (House Bill No. 982).

AN ACT

To repeal an Act approved March 18, 1986 (Ga. L. 1986, p. 3800), which continued in force and effect as a part of the Constitution of the State of Georgia that constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes; to repeal that constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government Purposes; to provide the authority for this Act; to provide for a referendum; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. That Act approved March 18, 1986 (Ga. L. 1986, p. 3800), which continued in force and effect as a

part of the Constitution of the State of Georgia that constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes is repealed in its entirety.

Section 2. That constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia providing for: the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes and which was continued on and after July 1, 1987, as a part of the Constitution of the State of Georgia is repealed in its entirety.

Section 3. This Act is passed pursuant to Article XI, Section I, Paragraph IV(b) of the Constitution of the State of Georgia which authorizes the repeal of certain amendments to the Constitution which were continued in force and effect after July 1, 1987.

Section 4. As soon as is permissible and reasonably practicable under the federal Voting Rights Act of 1965, as amended, and under the general laws of this state, the election superintendent of Muscogee County shall call and conduct an election for the purpose of submitting this Act to the electors of Muscogee County and the Muscogee County School District for approval or rejection. The

superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of Muscogee County. The ballot shall have written or printed thereon the words:

"[ ] YES
[ ] NO

Shall the local constitutional amendment be repealed which provides for the assessment of certain homestead property of Muscogee County for ad valorem tax purposes so that after such repeal, homestead property in Muscogee County will be assessed for ad valorem tax purposes in the manner provided by the general laws of this state?"

All persons desiring to vote for approval of the Act shall vote "Yes," and those persons desiring to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on such question are for approval of Sections 1 through 3 of this Act, then Sections 1 through 3 of this Act shall become of full force and effect immediately and shall be applicable to all taxable years beginning on or after January 1 immediately following such election; otherwise this Act shall be void and of no force and effect and shall be automatically repealed upon the date the election results are certified under this section. In the event the election provided for in this section is not conducted on or before the date of the November, 1992, general election, this Act shall stand repealed in its entirety on December 31, 1992.

The expense of such election shall be borne by Muscogee County. It shall be the superintendent's duty to certify the result thereof to the Secretary of State.

Section 5. Except as otherwise provided in Section 4 of this Act, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

Section 6. All laws and parts of laws in conflict with this Act are repealed.

NOTICE OF INTENTION TO INTRODUCE LOCAL LEGISLATION

Notice is given that there will be introduced at the regular 1991 session of the General Assembly of Georgia, a bill to repeal an Act approved March 18, 1986 (Ga. L. 1986, p. 3800) which continued in force and effect as a part of the Constitution of the State of Georgia that constitutional amendment duly ratified at the 1980 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia, providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes; to repeal that constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes; to provide the authority for this Act; to provide for a

referendum, to repeal conflicting laws, and for other purposes.

This 28 day of February, 1991.

/s/ E.H. POLLEYS, JR.
City Attorney

GEORGIA, FULTON COUNTY.

Personally appeared before me, the undersigned authority, duly authorized to administer oaths, Thomas B. Buck, III, who, on oath, deposes and says that he is Representative from the 95th District, and that the attached copy of Notice of Intention to Introduce Local Legislation was published in the Columbus Ledger-Enquirer which is the official organ of Muscogee County, on the following date: March 1, 1991.

/s/ Thomas B. Buck, III
State Representative,
District 95

Sworn to and subscribed before me,
this 4th day of March, 1991.

/s/ Connie S. Guzzetti
Notary Public, Georgia State at Large.
My Commission Expires Oct. 26, 1993.
(Seal).

Approved April 4, 1991.

1992 Ga. Laws CCCLXXXVI

RESULTS OF REFERENDUM ELECTIONS

Georgia Laws, 1991:

County	Page No.	SUBJECT	Date of Election	Result
Muscogee	4255	City-County Government and School Taxes; Homestead Valuation; Local Constitutional Amendments Repealed; Referendum	11-5-91	Yes: 5,731 No: 24,247
Muscogee	4259	Homestead Exemption; Co unty and School District Taxes, Disabled Veterans, Terms and Conditions, Procedures; Applicability; Referendum	11-5-91	Yes: 25,203 No: 4,579
Muscogee	4265	Homestead Exemptions; County and School District Taxes, Procedures; Terms and Conditions; Applicability, Referendum	11-5-91	Yes: 27,198 No: 2,640
Newton	4328	Homestead Exemption, County & School District Taxes; Eligibility; Restrictions; Applicability; Referendum	Referendum Not Held	
Oconee	3822	School Superintendent, Appointment; Term; Contract	11-5-91	Yes: 795 No: 1,286
Pickens	3851	School District Homestead Exemption, Referendum	Referendum Not Held	
Pickens	4212	Board of Commissioners; Creation; Referendum	3-3-92	Yes: 1,377 No: 2,081
Pike	3695	School District; Homestead Exemption; Referendum	Referendum Not Held	
Pulaski	4175	Board District; Homestead Exemption; Referendum Board of Education; Consolidation and Restatement of Law, Members; Nonpartisan Election; Qualifications; Vacancies, Dates of Elections; Referendum . . .	Referendum Not Held	

1999 Ga. Laws 1043

REVENUE AND TAXATION – AD VALOREM TAXES; MILLAGE RATE DETERMINATIONS; CHANGES IN RETURNS; RECORDS; DISCLOSURES, APPEALS; PROCEDURES.

No. 431 (Senate Bill No. 177).

AN ACT

To amend Chapter 3 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of property, so as to provide for comprehensive procedures regarding the determination of certain millage rates; to provide for definitions; to provide for certification; to provide for the adoption of millage rates; to provide for the notice and public hearings; to provide for enforcement; to change certain provisions regarding notice of changes in ad valorem tax returns; to provide for notice of additional information, to provide availability of certain records and information; to provide for additional disclosure of information to taxpayers; to change certain provisions regarding review and appeal of assessments to provide for times to conduct appeal or arbitration proceedings; to provide for written notice of grounds for rejecting taxpayer's position; to change certain provisions regarding prima-facie correctness and burden of proof; to provide for recovery of litigation and attorney's fees under certain circumstances; to provide for audio recording of certain proceedings; to provide for powers, duties, and authority of the state revenue commissioner with respect to the foregoing; to provide for other matters relative to the foregoing; to provide for an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

[. . .]

(c)(1) Whenever a recommending authority or levying authority shall propose to adopt a millage rate which does not exceed the roll-back rate, it shall adopt that millage rate at an advertised public meeting and at a time and place which is convenient to the taxpayers of the taxing jurisdiction, in accordance with the procedures specified under Code Section 48-5-32.

(2) In those instances in which the recommending authority or levying authority proposes to establish any millage rate which would require increases beyond the roll-back rate, the recommending authority or levying authority shall advertise its intent to do so and shall conduct at least three public hearings thereon, at least one of which shall commence between the hours of 6:00 P.M. and 7:00 P.M., inclusive, on a business weekday. The recommending authority or levying authority shall place an advertisement in a newspaper of general circulation serving the residents of the unit of local government, which shall read as follows:

NOTICE OF PROPERTY TAX INCREASE

The (*name of recommending authority or levying authority*) has tentatively adopted a millage rate which will require an increase in property taxes by (*percentage increase over roll-back rate*) percent.

All concerned citizens are invited to the public hearing on this tax increase to be held at (*place of meeting*) on (*date and time*).

Simultaneously with this notice the recommending authority or levying authority shall provide a press release to the local media.

(3) The advertisement shall appear at least one week prior to each hearing and shall be prominently displayed and shall not be placed in that section of the newspaper where legal notices appear.

(4) No recommending authority shall recommend and no levying authority shall levy a millage rate in excess of the proposed millage rate as established pursuant to paragraph (2) of this subsection without beginning anew the procedures and hearings required by this Code section and those required by Code Section 48-5-32.

[. . .]

APPENDIX C – RESOLUTION OF THE COUNCIL OF COLUMBUS

A RESOLUTION

No. 667-80

WHEREAS, the rate of inflation in the past several years has continued at an increasingly excessive rate; and,

WHEREAS, the value of single family homeowner occupied property has generally increased at an even more rapid rate than the general inflation rate; and,

WHEREAS, values of homeowner occupied property are likely to continue to increase in the future at a rate exceeding the general inflation rate; and,

WHEREAS, it seems desirable to protect the homeowners of Muscogee County from a trend of increasingly higher property assessments brought about by rampant inflation, which has the potential of resulting in confiscatory taxation; and,

WHEREAS, it appears that an amendment to the Constitution of the State of Georgia is necessary to change the method of arriving at assessed values for homestead property in Muscogee County.

NOW, THEREFORE, THE COUNCIL OF COLUMBUS, GEORGIA HEREBY RESOLVES:

That this Council does hereby request the Columbus Delegation to the Georgia General Assembly to seek the passage of a Resolution of the General Assembly placing on the ballot before the people a proposed amendment to the Constitution of Georgia authorizing the assessment of homestead property in Muscogee County for ad valorem tax purposes based on the value of the property

on January 1, 1983; or on January 1, of the first year when homestead exemption is allowed and claimed after January 1, 1983; or on January 1 of the year following the last change of ownership after January 1, 1983, whichever is later.

Introduced and read at a regular meeting of the Council of Columbus, Georgia, held on the 23rd day of December, 1980 and adopted at said meeting by the affirmative vote of nine members of said Council.

Councilor Basset voting	*Absent for the vote*
Councilor Chester voting	*Yes.*
Councilor Henry voting	*Yes.*
Councilor Jernigan voting	*Yes.*
Councilor Kendrick voting	*Yes.*
Councilor Land voting	*Yes.*
Councilor McClung voting	*Absent.*
Councilor Rector voting	*Yes.*
Councilor Wells voting	*Yes.*
Councilor Wright voting	*Yes.*

/s/ _____
LEMUEL H. MILLER
CLERK

/s/ _____
HARRY C. JACKSON
MAYOR

APPENDIX D – RELEVANT CONSTITUTIONAL PROVISIONS

GA. CONST. art. VII, § 1, ¶ 2(a)

Taxing Power Limited.

The annual levy of state ad valorem taxes on tangible property for all purposes, except for defending the state in an emergency, shall not exceed one-fourth mill on each dollar of the assessed value of the property.

GA. CONST. art. X, § 1, ¶ 1

Proposals to Amend the Constitution; New Constitution.

Amendments to this Constitution or a new Constitution may be proposed by the General Assembly or by a constitutional convention, as provided in this article. Only amendments which are of general and uniform applicability throughout the state shall be proposed, passed, or submitted to the people.

GA. CONST. art. XI, § 1, ¶ 4

(a) The following amendments to the Constitutions of 1877, 1945, and 1976 shall continue in force and effect as part of this Constitution until July 1, 1987, at which time said amendments shall be repealed and shall be deleted as a part of this Constitution unless any such amendment shall be specifically continued in force and effect without amendment either by a local law enacted prior to July 1, 1987, with or without a referendum as provided by law, or by an ordinance or resolution duly

adopted prior to July 1, 1987, by the local governing authority in the manner provided for the adoption of home rule amendments to its charter or local Act: (1) amendments to the Constitution of 1877 and the Constitution of 1945 which were continued in force and effect as a part of the Constitution of 1976 pursuant to the provisions of Article XIII, Section I, Paragraph II of the Constitution of 1976 which are in force and effect on the effective date of this Constitution; (2) amendments to the Constitution of 1976 which were ratified as general amendments but which by their terms applied principally to a particular political subdivision or subdivisions which are in force and effect on the effective date of this Constitution; (3) amendments to the Constitution of 1976 which were ratified not as general amendments which are in force and effect on the effective date of this Constitution; and (4) amendments to the Constitution of 1976 of the type provided for in the immediately preceding two subparagraphs (2) and (3) of this Paragraph which were ratified at the same time this Constitution was ratified.

(b) Any amendment which is continued in force and effect after July 1, 1987, pursuant to the provisions of subparagraph (a) of this Paragraph shall be continued in force and effect as a part of this Constitution, except that such amendment may thereafter be repealed but may not be amended. The repeal of any such amendment shall be accomplished by local Act of the General Assembly, the effectiveness of which shall be conditioned on its approval by a majority of the qualified voters voting thereon in each of the particular political subdivisions affected by the amendment.

(c) All laws enacted pursuant to those amendments to the Constitution which are not continued in force and

effect pursuant to subparagraph (a) of this Paragraph shall be repealed on July 1, 1987. All laws validly enacted on, before, or after July 1, 1987, and pursuant to the specific authorization of an amendment continued in force and effect pursuant to the provisions of subparagraph (a) of this Paragraph shall be legal, valid, and constitutional under this Constitution. Nothing in this subparagraph (c) shall be construed to revive any law not in force and effect on June 30, 1987.

(d) Notwithstanding the provisions of subparagraphs (a) and (b), the following amendments to the Constitution of 1877 and 1945 shall be continued in force as a part of this Constitution: amendments to the Constitution of 1877 and the Constitution of 1945 which created or authorized the creation of metropolitan rapid transit authorities, port authorities, and industrial areas and which were continued in force as a part of the Constitution of 1976 pursuant to the provisions of Article XIII, Section I, Paragraph II of the Constitution of 1976 and which are in force on the effective date of this Constitution.

(e) Any person owning property in an industrial area described in subparagraph (d) may voluntarily remove the property from the industrial area by filing a certificate to that effect with the clerk of the superior court for the county in which the property is located, but only if the property is located on an island. Once the certificate is filed, the property described in the certificate, together with all public streets and public rights of way within the property, abutting the property, or connecting the property to property outside the industrial area will no longer be in the industrial area and may be annexed by an adjacent city. The filing of a certificate will be irrevocable and will bind the owners, their heirs, and their assigns. The term

"owner" includes anyone with a legal or equitable ownership in property but does not include a beneficiary of any trust or a partner in any partnership owning an interest in the property or anyone owning an easement right in the property.

GA. CONST. of 1945, art. VII, § 10, ¶ 1

SECTION X.

Paragraph I. **Existing Amendments Continued of Force**. Amendments to the Constitution of the State of Georgia of 1877 in effect at the date of the ratification by the voters of the State, of this Constitution, shall continue of full force and effect after the ratification of this Constitution, where such amendments are of merely local, and not, general application, including the amendments pertaining to the Coastal Highway District of this State. There is also continued under this provision in force and effect, amendments to the Constitution of 1877 applicable to counties and cities having a population in excess of a number stated in such amendments, amendments applicable to counties having a city wholly or partly therein with a population in excess of, or not less than a number stated in such amendment, and amendments applicable to cities lying in two counties, where such amendments are in force and effect at the time of the ratification of this Constitution. Provided the amendment of Paragraph I of Section II of Article XI of the Constitution of 1877 proposed by Georgia Laws 1943 page 53 and ratified August 3, 1943, authorizing election by the people of the County Board of Education of Spalding County; prescribing rules of eligibility of members of the Board; providing for

election by the Board of the County Superintendent of Schools shall not be continued of force.

GA. CONST. of 1976, art. XII, § 1, ¶ 1

SECTION I.

Paragraph I. Proposals to amend the Constitution; new Constitution; submission to people. A new Constitution or amendments to this Constitution may be proposed by the General Assembly or by a constitutional convention. The proposal by the General Assembly to provide for a new Constitution or to amend this Constitution shall originate as a resolution in either the Senate or the House of Representatives and, if approved by two-thirds of the members elected to each branch of the General Assembly in a roll call vote, such proposal shall be entered on the Journals of each branch with the "Ayes" and "Nays" taken thereon. Any proposal to amend this Constitution or any proposal for a new Constitution may be amended or repealed by the same General Assembly which adopted such proposal by the affirmative vote of two-thirds of the members elected to each branch of the General Assembly in a roll call vote entered on their respective Journals, if such action is taken at least two months prior to the date of the election at which such proposal is to be submitted.

The Governor, the Attorney General, and the Secretary of State shall meet and determine whether a proposed amendment is general, and if not general, shall determine what political subdivision or subdivisions are directly affected by such proposed amendment. If a proposed

amendment is general, it shall be punished [sic], as provided by law in full, once each week for three consecutive weeks immediately preceding the date of the election at which such proposed amendment is to be submitted, in one newspaper of general circulation in each Congressional District of the State. If such proposed amendment is not general, it shall be published, as provided by law, in full, once each week for three consecutive weeks immediately preceding the date of the election at which such proposed amendment is to be submitted, in one newspaper of general circulation in each county in which the directly affected political subdivision or subdivisions are located. In the event no such newspaper is located in such county, a newspaper in an adjoining county shall be used. A proposal for a new Constitution shall be published in the same manner as proposed general amendments. Any proposed amendment which is general or a proposal for a new Constitution shall be submitted to the people of the entire State at the next general election which is held in the even-numbered years, and if ratified by a majority of the electors qualified to vote for members of the General Assembly voting thereon, such amendment shall become a part of this Constitution or shall become the new Constitution, as the case may be. A proposed amendment which is not general shall be submitted at the next general election which is held in the even-numbered years, but shall only be submitted to the people of the political subdivision or subdivisions directly affected. The votes of the electors in each political subdivision affected shall be counted separately in determining whether such proposed amendment is ratified, and it must be ratified by a majority of the electors qualified to vote for members of the General Assembly voting thereon in each such political subdivision before it shall become a part of this Constitution. The

General Assembly, in the resolution, shall state the language to be used in submitting the proposed amendment or proposal for a new Constitution. When more than one amendment is submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment separately. A proposal for one or more changes within a single Article may be submitted as a single amendment. A proposal for one or more changes within a single Article and a related change or related changes in one or more other Articles may be submitted as a single amendment. A proposal for a new Article may be submitted as a single amendment. A proposal for a new Article and a related change or related changes in one or more other Articles may be submitted as a single amendment.

GA. CONST. of 1976, art. XIII, § 1, ¶ 2

Paragraph II. Amendments Continued as Part of This Constitution. Amendments to the Constitution of 1877 which were continued in force and effect by Article VII, Section X, Paragraph I of the Constitution of 1945, and which are in force and effect on the effective date of this Constitution shall continue in force and effect as part of this Constitution. Amendments to the Constitution of 1945 which did no [sic] directly affect the whole State and which were required to be ratified in a particular subdivision or subdivisions as well as in the State as a whole, which are in force and effect on the effective date of this Constitution shall continue in force and effect as part of this Constitution. Amendments to the Constitution of 1945 which were ratified pursuant to the provisions of an amendment to article XIII, Section I, Paragraph I ratified at the 1952 general election and found in Georgia Laws

1951, page 681, which are in force and effect on the effective date of this Constitution shall continue in force and effect as part of this constitution. Amendments to the Constitution of 1945 which were ratified subsequent to 1956 but which were not ratified as general amendments, which are in force and effect on the effective date of this Constitution shall continue in force and effect as part of this Constitution. Amendments to the Constitution of 1945 which were ratified subsequent to 1956 and which were ratified as general amendments but which by their terms applied principally to a particular political subdivision or subdivisions, which are in force and effect on the effective date of this Constitution shall continue in force and effect as part of this Constitution. Amendments of the same type provided for in the immediately preceding two sentences of this Paragraph which were ratified at the same time this Constitution was ratified shall continue in force and effect as part of this Constitution.

APPENDIX E – Excerpts from Reply Memorandum in Support of Plaintiff's Motion for Summary Judgment

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY

STATE OF GEORGIA

CM TAX EQUALIZATION FOUNDATION, INC.; HULETTE BOOTH; J. W. FEIGHNER; TERRELL GREEN; BETTIE RUTH HAYNES; MOSES HAYNES; EILEEN HENSON; KENNETH HENSON, JR, EARLE F. LASSETER, SALLY BORK LASSETER, LISA D. MCNARY; FAYE SHERRILL; RON SHERRILL; TED SHORT; PENNY SHORT; CARL J. THOMAS; CONNIE GRAY THOMAS; ERNESTINE WELLS; RICHARD WELLS; WILL WHITE; AMY WHITE; CHRISTOPHER WIGHTMAN; and ASTRID WIGHTMAN; Plaintiffs, v. COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT; MUSCOGEE COUNTY BOARD OF TAX ASSESSORS; LULA LUNSFORD HUFF, in her official capacity as Tax	Civil Action No: SU-2000-CV-3256

Commissioner, Muscogee County; and MUSCOGEE COUNTY BOARD OF EQUALIZATION;	)
Defendants	)

REPLY MEMORANDUM IN SUPPORT OF *PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT*

[. . .]

[22] Violation of the Commerce Clause of the United States Constitution

Contrary to the Defendants' assertion, the tax freeze does violate the provisions of the Commerce Clause by providing a property tax exemption for select residents within the County, while simultaneously de lying the same treatment to those who move into the state. They cite *Camps Newfound/Owatonna, Inc. v. Town of Harrison,* 520 U.S. 564 (1997), to support their [23] claim. However, as they acknowledge, the holding in *Camps Newfound* struck down a property exemption that discriminated against out-of-state residents. The Supreme Court rejected analysis suggesting that "articles of commerce" are limited to items and do not include persons or their role in the process of commerce as purchaser of goods or services. "Denial of a tax exemption is explicitly and primarily triggered by engaging in a certain level of interstate commerce." Id. at 570 (citation omitted). Similarly, the tax freeze is a penalty against out-of-state transferees who wish to purchase property, as they will be penalized because of their out-of-state status.

The Defendants then turn to the spurious argument that the tax freeze is merely a local tax that preserves the health and safety of the County's residents. They erroneously rely on *General Motors Corp v Tracy*, 519 U.S. 278 (1997) and *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33 (1940), claiming that the tax freeze is a local tax with local benefits that only incidentally involve interstate commerce. Unlike the tax schemes at issue in those cases, the tax freeze is less than a local tax. It is a narrow, insular tax for the benefit of an artificially protected class, one that serves to directly impact interstate commerce by harming homeownership and reducing the ability of the County to raise funds in the interest of the health, safety, morals and welfare of its people. It suppresses the tax revenue available for education, law enforcement, emergency medical services and other social welfare services dependent on tax revenue.

Furthermore, the U.S. Supreme Court's reasoning in Tracy was that the tax did not treat "similarly situated" persons differently nor did it protect intra-state sellers over out-of-state sellers. In the case of the tax freeze, similarly situated persons – homeowners – are treated [24] differently based on the duration of residency. Also, the tax freeze inherently protects intra-County homeowners over those who would move to the County and participate in homeownership.

The tax freeze is not remote; it is a closely-targeted measure directly impacting interstate commerce. The Defendants claim a future benefit to all citizens who purchase property under the tax freeze. This is self-evident and not called into question. What is disputed is the impact on the majority of current citizens and potential citizens who will never have the benefit of its

protection. The only benefit provided to homeowners not protected by the lowest valuations of the tax freeze is the prescient knowledge that they will continue to pay the cost for their insulated neighbors.

Finally, the Defendants' argument of lack of intent is specious, as it was certainly foreseeable and even logical that a tax freeze for a narrow group would impact out-of-state business and consumers. By artificially increasing the taxes on newcomers and-reducing the tax revenue, the effect would necessarily harm both business and consumers.[1]

Violation of the Right to Travel Protection under the United States Constitution

The right to travel, the inherent meaning of the right to move freely between the states, is certainly "firmly embed led in our jurisprudence." *Saenz v. Roe,* 526 U.S. 489, 498 (1999). [25] The Defendants' argument, then, is that a prohibitive tax that artificially inflates the costs of homeownership for newcomers does not impugn this right. Clearly, this is a fallacious assertion. The right to travel provides that "those travelers who elect to become permanent residents [have] the right to be treated like other

[1] It is doubtful whether invalidation of the tax freeze can be rested solely on Plaintiffs' complaint under the Commerce Clause of the United States Constitution. The same may be said of Plaintiffs' positions on interference with the Right to Travel and violation of the Guaranty Clause of the United States Constitution. Each is of significance, however, and together they emphasize the unjustifiable consequences of the "double dip" created by the tax freeze at the expense of commerce, travelers and those bearing the burden of extraordinary financial benefits given to the early homeowners.

citizens of that State." *Id.* at 501. As much as the ability to actually change location, the ability to own and establish a home in a new state of residence is intrinsic to the right to travel. *Attorney Gen. v. Soto-Lopez,* 476 U.S. 898, 904 (1986), and *Saenz* set a firm standard that the timing of a resident's arrival can not be the basis for treating the newcomer differently, which is the necessary effect of the tax freeze. Yet, the tax freeze places 1983 as the time after which a new resident is denied the benefits afforded to others who lived in the County and owned homes at that date.

[. . .]